HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rules 32 (2)(b)

Description of the case.

A.O. No. 556 of 2005

Jagdish Chandra Bharti & another — Appellants

Versus

Ram Kumar & another — Respondents

Approved for reporting.

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Not approved for reporting

Date of decision 19.10.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 556 of 2005

1. Sri Jagdish Chandra Bharti s/o late Umi Bharti
2. Smt. Sarswati Devi w/o Sri Jagdish Chandra Bharti
Both residents of village & Post Choi, Tehsil Ramnagar, District Nainital ..... Appellants

versus

1. Sri Ram Kumar Agarwal s/o Sri Kishan Lal Agarwal R/o Ram Mandir Road/Koshi Road, Ramnagar, Tehsil Ramnagar, District Nainital.
2. National Insurance Company Ltd. Haldwani, Divisional Office, Tikonia, Canal Road, Haldwani, District Nainital through its Divisional Manager
..... Respondents

Sri P.C. Maulekhi, Advocate for the appellants
Sri D.C.S. Rawat, Advocate for respondent no. 1
Sri Prabhat Pandey, Advocate for respondent no. 2

Dated: October 19, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon'ble Rajesh Tandon, J.

1) Heard Sri P.C. Maulekhi, counsel for the appellants, Sri D.C.S. Rawat counsel for the respondent no. 1 and Sri Prabhat Pandey counsel for respondent no. 2.

2) This appeal is for enhancement of the amount of award dated 17.2.2005, passed by the Motor Accident Claims Tribunal, Nainital.

3) The appellants preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Bhartendu Bharti in a motor vehicle

accident. According to the claimants on the fateful day on 31.8.2003 the deceased was going to Dhikuli school by scooter along with his friend Sanjay. A bus No. U.P. 02-C/7852, which was coming from the opposite direction dashed the scooter, due to which the Sri Bhartendu Bharti sustained grievous injuries. He was rushed to Civil Hospital, Ramnangar from where he was referred to Krishna Hospital, Haldwani. Again he was sent to Sai Hospital, Moradabad where he succumbed to his injuries on 26.9.2003. According to the claimants at the time of accident the deceased was studying in class X and he was earning Rs. 3,000/- per month by tuition. The claimants alleged to have incurred Rs. 3,00,000/- towards medical expenses in the treatment of the deceased and claimed rupees ten lakhs as compensation.

4) The respondent no. 1, filed written statement and submitted that at the time of accident the bus of the respondent no. 1 was being driven cautiously at a moderate speed. The accident took place due to rash and negligent driving of the scooter driver. The compensation claimed is excessive.

5) Respondent no. 2 the National Insurance Company has denied the allegations made in the claim petition. The respondent no. 2 has alleged that the owner of the bus has violated the terms and conditions of the insurance policy as such the insurance company is not liable to pay compensation to the claimants.

6) The claimants examined P.W.1 Jagdish Chandra Bharti and P.W. 2 Phiroj Khan and have filed copy of the post mortem report, death certificate, copy of F.I.R. Insurance cover note, registration certificate of the vehicle and bills of medical expenses. Opposite parties examined D.W.1 Lal Singh and have

filed registration certificate, fitness certificate, permit and licence of the driver.

7) On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to the rash and negligent driving of the bus driver.

8) So far as the compensation is concerned the Tribunal has recorded the finding that at the time of accident the age of the deceased was 17 years, he was student and he had no personal income. According to Schedule II of Section 163 (A) of the Motor Vehicles Act, the claims Tribunal has held the notional income of the deceased as Rs.15,000/- per annum and after deducting 1/3 amount for the own expenses of the deceased, the annual dependency of Rs. 10,000/- was assessed. The deceased was unmarried and claimants are the father and mother of the deceased, therefore, multiplier of 13 was selected according to the age of the parents of the deceased. Thus a compensation of 10,000 x 13 = Rs. 1,30,000/- has been worked out by the Tribunal. The Claims Tribunal also awarded Rs.35,000/- for medical expenses and Rs.10,000/- for the last rites. Thus a total compensation of Rs. 1,75,000/- was awarded to the claimants. The Claims Tribunal has also directed that if the amount is not paid within one month, the claimants shall get 6% interest from the date of institution of claim petition till actual payment.

9) Feeling aggrieved the claimants have filed the present appeal for enhancement of the amount of compensation under Section 173 of the Motor Vehicles Act. Counsel for the appellants has submitted that the income of the deceased has wrongly been calculated at Rs.15,000/- per annum only. He has further submitted that the selection of multiplier of 13 was also not justified as the same was on the lower side.

10) After giving thoughtful consideration of the submissions of the appellants, we are of the opinion that the assessment of the income of the deceased by the Tribunal at Rs. 15,000/- per annum on the basis of the notional income requires reconsideration. The notional income of Rs. 15,000/- per annum in the Second Schedule under section 163-A of the Motor Vehicles Act, was prescribed in the year 1994. The accident in the present case took place in the year 2003. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 30,000/- per annum. After deducting 1/3 amount i.e. Rs.10,000/- for his own expenses, the annual dependency of the claimants on the income of the deceased comes to Rs. 20,000/-.

11) At the time of accident the age of the deceased was 17 years. He was unmarried, as such multiplier has to be selected on the basis of the age of claimants i.e. parents of the deceased.

12) The Apex court in the case of **Municipal Corporation of Greater Bombay vs. Laxman Iyer and another, (2003) 8 SCC 731**, has held that, where the claimants are parents of the deceased, the multiplier should not be more than ten.

13) We deem it necessary to reproduce paragraph 12 of the Apex Court Judgment in that case:

"12. *Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated has relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits.*

The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants, it can never exceed 10 even by the most liberal standards. Worked out on that basis the amount comes to Rs 3.6 lakhs at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after making an appropriate deduction which can reasonably be fixed at 25%, the compensation amount payable by the Corporation can be fixed at rupees three lakhs including the amount awarded by the Tribunal and confirmed by the High Court for loss of expectation of life. Interest at the rate as awarded by the High court is maintained from the date of application for compensation."

14) Thus in the present case multiplier of 10 would be just and proper. By multiplying annual dependency of Rs. 20,000/- by 10, the compensation works out to Rs. 2,00,000/-.

15) The Claims Tribunal awarded a sum of Rs.35,000/- towards the medical expenses. The claimants have submitted bills and vouchers of Rs. 1,23,309.98 and admittedly the said amount was incurred in the treatment of the deceased, which may be rounded at Rs. 1,25,000/-. The counsel for the respondent no. 2 was shown the bills and vouchers and he also conceded the same. Thus a sum of Rs. 1,25,000/- is awarded towards the medical expenses and the amount awarded by the Claims Tribunal is enhanced to Rs.90,000/- Further sum of Rs.10,000/- is awarded for expenses incurred in the last rites of

the deceased. Thus the claimants are entitled to get a total sum of Rs. 2,00,000+ 1,25,000+ 10,000= Rs. 3,35,000/-.

16) The above compensation has been worked out keeping in view the observations made by the Apex Court in the case **T.N. State Transport Corporation Ltd. Vs. S. Rajapriya and others. (2005) 6 SCC 236.** In paragaraph 10 it has been observed as under:

"10. *Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."*

17) Apart from that we also award pendente lite and future interest @ 6% per annum on the amount of Rs. 3,35,000/-. We, with a view to avoid any delay in the computation of the amount of interest by the Claims Tribunal, deem it proper to quantify the amount of interest payable to the claimants. We, therefore, quantify the amount of interest at Rs. 20,000/-. Thus the claimants become entitled to get a total sum of Rs. 3,55,000/-.

16) The appeal is, therefore, allowed. The compensation of Rs. 1,75,000/- awarded by the Claims Tribunal is enhanced to Rs. 3,35,000/-. The appellants are also entitled to get Rs. 20,000/- towards interest. The respondent no. 2, National Insurance Company is directed to pay the entire amount of the award within two month.

17) The amount deposited in this Court be remitted to the Claims Tribunal concerned forthwith.

18) There will be no order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: October 19,2006
*Dhyani